IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.24 OF 2005

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Union of India acting through
DRM(W) Central Railway,
Mumbai, CST ...Petitioner

v/s.

M/s.N.R. Enterprises ...Respondent

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Mr.Suresh Kumar for the Petitioner.
Mr.U.S.Samudrala for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 30TH AUGUST,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the arbitral tribunal directing the Petitioner-Railway to pay certain amounts to the Respondent. The amount awarded against claim No.1 is for work actually done by the contractor i.e. Rs.20,000/-. The amount awarded against claim No.1 was not challenged before me. The award made against claims Nos.2, 4, 5, 6, 7 & 8 was challenged. By claim No.2 refund of security deposit has been ordered. By award against claim No.4, an amount of Rs.19,800/- is directed to be paid for under utilisation of resources. By award against claim No.5 an amount of Rs.40,000/- has been directed to be paid for under utilisation of Overheads. By an award against claim No.6, an amount of Rs.13,200/- is directed to be paid as costs of the material which remained at site.

2. Now, to all these amounts the arbitral tribunal held that the claimant is entitled on a finding that termination of the contract was invalid. The only

reason to be found for this finding is in paragraph 17, where the arbitral tribunal has observed that the termination of the contract on 13-12-2000 was unlawful since drawings were supplied on 18-11-2000. This finding recorded by the arbitral tribunal suffers from non-application of mind to relevant material that was available on record. After the drawings were supplied to the contractor on 18-11-2000, a letter was addressed to the contractor on 28-11-2000 pointing out to the contractor that inspite of repeated instructions given by the sub-ordinate officers as also by the Divisional Railway Manager verbally, the contractor has failed to start the work/ show adequate progress. It was also alleged that the contractor has also not submitted a detailed programme for completion of the work. Therefore, the contractor was given 7 days notice to commence the work and was asked to show good progress, it was indicated that if he fails to comply with this requirement, the contract may be terminated. The report was submitted to the Asst.Divisional Manager by the sub-ordinate officer on 11-12-2000 that despite service of notice dated 28-11-2000 the contractor has not turned up to execute the work. Therefore, on 11-12-2000, 48 hours

notice was given to the contractor to commence the work. He was told that on expiry of that time the contract will stand terminated. The contractor did not commence the work even after 48 hours notice. Ultimately, by notice dated 13-12-2000, the contract was terminated. Admitted position is that none of these letters have been replied to by the contractor. A finding that the termination of the contract on 13-12-2000 was invalid could have been recorded by the arbitral tribunal only after considering this correspondence, which admittedly was before the arbitral tribunal. Non-consideration of the relevant material produced on record renders the finding recorded by the arbitral tribunal invalid as the finding violates the principles of natural justice, as quasi-judicial forum has excluded from consideration the relevant material.

3. Thus, I find that the finding recorded by the arbitral tribunal that the termination of the contract was invalid cannot be sustained and is liable to be set aside. Once the termination of the contract is held to be not invalid, the amounts awarded against claims Nos. 2, 4, 5 & 6 cannot be awarded, because they have been awarded on the basis

of the finding that the termination of the contract was invalid.

4. By award against claim No.7, the arbitral tribunal has directed payment of interest on awarded amount from 13-3-2001 till the date of realisation. It is pointed out that awarding of interest is contrary to clause 64(5) of General Conditions of Contract. Clause 64(5) of the General Conditions of Contract lays down that the arbitral tribunal shall not award interest on the amount payable for any period till the date on which the award is made. It is clear from the award the arbitral tribunal has not taken into consideration the provisions of clause 64(5) before making an order for payment of interest. Thus, the award made by the arbitral tribunal on this count also suffers from non application of mind to the relevant clause in the contract and therefore it is liable to be set aside.

5. By award against claim No.8, the arbitral tribunal has directed that Rs.50,000/- shall be paid by the Railways to the claimant as costs of the arbitral proceedings. It is pointed out that award is contrary to what is contained in clause 64(6) of

the General Conditions of Contract. Clause 64(6) lays down that costs of arbitration shall be borne by the respective parties. In awarding costs, the arbitral tribunal has not referred to recitals in clause 64(6), which are relevant. Therefore, the award made by the arbitral tribunal against claim No.8 also suffers from non-application of mind to relevant recitals in the General Conditions of contract.

6. In the result, therefore, the petition succeeds and is allowed. The award made by the arbitral tribunal against all the claims, except claim No.1, is set aside. The Respondent is directed to pay costs of this petition to the Petitioner as incurred by the Petitioner.

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